INCAPACITY:
DUE TO POOR WORK PERFORMANCE, ILL HEALTH/INJURY POLICY

Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by Council and may be reviewed on an earlier date if necessary.

A. THE POLICY (POOR PERFORMANCE)

1. THE PREAMBLE

The Labour Relations Act (Act 66 of 1995 as amended) sets out certain guidelines in handling incapacity. The following is a recommended guideline in dealing with incapacity (distinct from incapacity with ill-health) where an employee has a lack of training, experience or education.

2. DEFINITIONS

Poor work performance is the inability or failure of an employee to meet the required standard(s) or output(s) for the position in which he/she is employed. Ill-health incapacity matters are dealt with in terms of the incapacity/ill-health injury policy. Poor work performance could include:

- Less than expected output poor quality;
• Failure to meet set targets;
• Work requiring rework/repair;
• Unnecessary material wastage;
• Any non-conformance to reasonable or agreed standards;
• Time wasting

All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

3. LEGAL FRAMEWORK

• Labour Relations Act (Act 66 of 1995 as amended)

4. SCOPE AND APPLICATION

The policy shall apply to all employees of the employer.

5. OBJECTIVES OF POLICY

The purpose of this policy is to establish a policy and procedure for managing incapacity (poor performance) at the Municipality in line with the requirements of the Labour Relations Act. This will assist managers/supervisors to identify the reasons for the non-performance and to provide a structured and consistent system of assisting the employee to improve his/her performance to the required standards within a reasonable period of time.

6. POLICY CONTENT

Clear and objective standards should be discussed with the employee. These Job-related standards should be fair and reasonable in that the employee has sufficient, induction, training and knowledge to perform at a particular level. Management must ensure that the standards are known to the employee.

Performance standards must be set in consultation with the employee.

Factors which have hindered an employee from reaching the set standards must be taken into consideration.
The employee must be addressed in terms of how he/she has not met agreed terms and standards, as well as given an opportunity to challenge the performance appraisal. The employee and the manager must discuss ways in which performance can be improved.

Management must assist and support the employee as far as possible. The assistance can take place by regular report-backs, refresher courses, training and counseling.

A Reasonable time period to improve performance must be given, subject to the requirements of the job.

All communication between management and the employee must be confirmed in writing.

In summary, management and the employee must work together in order to correct the poor performance of the individual. It is the manager’s responsibility to evaluate, instruct, train, guide and coach the employee with the aim of overall improved performance.

Once the manager has established that the employee’s performance is unsatisfactory in spite of the support, training and the period given for improvement, and that there is no other way, short of dismissal, to remedy the matter, the appropriate steps may be taken to discipline the employee. The appropriate steps could include a hearing in which both management and the employee and/or his/her representative could be called to give reasons as to why the employee’s poor performance is evident. Appropriate measures could be decided upon at this hearing. The steps must be in accordance with items 8 and 9, Schedule 8 of the LRA.

B. POLICY (ILL HEALTH/INJURY)

1. PREAMBLE

   The Municipality has embarked on a process to address incapacity due to ill health/injury at the workplace within the prescribed guidelines in terms of the Labour Relations Act.

2. DEFINITIONS
Incapacity refers to an individual’s inability to perform according to the stipulated work standards of a particular job.

All terminology not defined under clause 2 of the policy shall bear the same meaning as in the applicable legislation.

3. **LEGAL FRAMEWORK**

- Basic Conditions of Employment Act 75 of 1997
- Labour Relations Act 66 of 1995
- Occupational Health & Safety Act 85 of 1993 + Regulations
- Compensation for Occupational Injury and Diseases Act 85 of 1993

4. **SCOPE AND APPLICATION**

The policy shall apply to all employees of the employer.

5. **OBJECTIVES OF POLICY**

The purpose of this policy is to ensure the Employer’s operational efficiency while at the same time exploring every possible alternatives action to avoid termination of employment, it is intended to ensure that when a termination for reason of incapacity due to ill health or injury takes place it is affected for a fair reason and in accordance with a fair procedure and as a last resort.

6. **POLICY CONTENT**

6.1 **General Principles**

- The Employer is committed to treating any employee who is incapacitated due to illness or injury in a fair and appropriate manner with regard to their particular circumstances.
- As such, no employee should be subjected to any form of victimization or unfair discrimination as a result of their disablement.
- The degree of incapacity, as well as the permanency of the incapacity, will be considered when assessing the person’s suitability for ongoing employment.
- The cause of the incapacity may also be relevant. In the case incapacity due to substance abuse, such as alcoholism
or drug abuse, counseling and rehabilitation may be appropriate steps to be considered.

6.2 Guidelines for Managing incapacity

6.2.1 Temporary incapacity

- If an employee is temporary unable to work, the employer should investigate the extent of the incapacity of the injury.
- Such an investigation should include appropriate medical and occupational diagnosis or prognosis.
- If the employee is likely to be absent for a time that is unreasonable long in the circumstances, the employer should investee all the possible alternatives short of dismissal. The employee and his/her representatives should be given an opportunity to state reason as to why alternatives short of dismissal should be considered.
- When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee.
- If the employee’s medical report indicates that the his/her condition has improved and the employee is capable of performing his/her duties, failure to do so will lead to disciplinary action being taken.

6.2.2 Permanent incapacity

- In cases of permanent incapacity, the Employer will ascertain the possibility of securing alternatives employment or adapting the duties or work circumstances of the employee to accommodate the employee’s disability. This could include an alternatives job of a lower rank.
- In the process of the investigation the employee will allowed the opportunity to state a case in response
and to be assisted by a fellow employee or Union representatives.

- Particular consideration will be given to employees who are injured at work or who are incapacitated by work related illness. (In this case the employer will assist the employee to claim Compensation for Occupational Injuries and Diseases (COIDA)).
- Termination of employment should only be considered if the employee’s disability cannot be reasonable accommodated by adapting his or her duties or work circumstances, and an alternatives position is not available.
- Should the employee be unable to continue working, the Employer will assist the employee to apply for a Permanent Health Insurance (PHI) benefit. Should the PHI claim not be approved by the insurer, the Employer does not hold any liability for compensation. Such application should be made soon as it becomes apparent that the employee would be unable to continue performing his or her normal duties. The application should be made in respect of the relevant fund or scheme applicable to the employee.

7. PROBATION PERIOD

Provision must be made for dealing with poor performance, ill health or injury during an employee’s probation period.

During the probation period, management should give relevant evaluation feedback, instruction, training and guidance to the employee in an attempt to meet the required standards. The guidelines above also apply.

In the event of the employee still not reaching the required standard of performance, the employee’s contract of employment may be terminated of the probation period may be extended where appropriate.

8. COMMUNICATION
This policy will be communicated to all Municipal employees using the full range of communication methods available to the municipality.

9. **BUDGET AND RESOURCES**

The financial and resource implication/s related to the implementation of this policy should be qualified and quantified.

10. **ROLES AND RESPONSIBILITIES**

It is the responsibility of management at the Municipality to manage performance and ensure that:

- Job descriptions and clear performance standards are communicated to and consulted with employees.
- Appropriate instructions, training and guidance are provided to employees.
- Employees are given a reasonable period, depending on seniority of the post, to capacitate themselves on the content of their jobs.
- Feedback, counseling and where appropriate, retraining and provided to employees to enable them to perform to standards.

All documentation and correspondence emanating from or related to this policy will be kept on either personal and/or record files as dictated by the nature of issue.

11. **PENALTIES**

Non-compliance to any of the stipulations contained in this policy will be regarded as misconduct, which will be dealt with in terms of the Disciplinary Code.

12. **DISPUTE RESOLUTION**
The dispute resolution procedure as provided for in terms of the SALGBC dispute resolution procedures, must be followed, where disputes arises in terms of this policy.

13. **AUTHORITY**

Formulated by: Director Corporate Services  Date:

Consulted LLF:  Date:

MM Approval:  ________________  Date:  ______________

Council Approval:  ________________  Date:  ______________